

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHELBY STONE, JR.)	
Claimant)	
VS.)	
)	
KDEX, INC.)	Docket No. 177,401
Respondent)	
AND)	
)	
CIGNA INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

On May 31, 1995, the applications of both claimant and respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge George R. Robertson on January 9, 1995, came on for oral argument.

APPEARANCES

Claimant appeared by and through his attorney, M. John Carpenter of Great Bend, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Mickey W. Mosier of Salina, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) Claimant appeals the finding regarding the nature and extent of claimant's injury and/or disability.
- (2) Respondent appeals alleging claimant's accidental injury did not arise out of and in the course of his employment and further raises the defense of "horseplay" as an objection to an award in this matter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The findings and conclusions set forth in the Award of the Administrative Law Judge are set out in some detail and it is not necessary to repeat same herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the issues raised.

The Administrative Law Judge accurately found that claimant's accidental injury did arise out of and in the course of his employment. While horseplay was involved, it was apparent that the respondent was both aware of the ongoing horseplay and had acquiesced to its presence on the job site. Thus, the wrestling match which led to claimant's broken leg would not prohibit claimant's entitlement to benefits in this matter.

Further, the Appeals Board finds the Administrative Law Judge's assessment of claimant's functional impairment at 10 percent to the right lower extremity with no involvement of the knee is supported by the evidence. The medical record does not support a finding that claimant's previously injured knee was in any way further injured, aggravated or exacerbated by this incident. The finding by the Administrative Law Judge that claimant suffered a 10 percent permanent partial functional impairment to the right lower extremity is affirmed by the Appeals Board.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson dated January 9, 1995, shall be affirmed in all respects and claimant, Shelby Stone, Jr., is granted an Award against respondent, KDEX, Inc., and its insurance carrier, CIGNA Insurance Company, for a 10% permanent partial loss of use of the right lower extremity.

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Shelby Stone, Jr., and against the respondent, KDEX, Inc., and its insurance carrier, CIGNA Insurance Company, for an accidental injury which occurred May 7, 1993 and based upon an average weekly wage

of \$450.56. Claimant is entitled to 45.43 weeks temporary total disability compensation at the rate of \$299.00 per week totalling \$13,583.57, followed by 14.46 weeks permanent partial disability at the rate of \$299.00 per week in the amount of \$4,323.54 for a 10% permanent partial loss of use of the right lower extremity making a total award of \$17,907.11.

As of May 10, 1996, the entire award is due and owing minus amounts previously paid.

Claimant is further entitled to medical expenses per the Award of the Administrative Law Judge and unauthorized medical expense to the statutory maximum upon presentation of an itemized statement verifying same.

Future medical will be considered upon proper application to and approval by the Director.

Claimant's contract for attorney's fees is approved insofar it is not in contravention to K.S.A. 1992 Supp. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Underwood & Shane	
Deposition of Bill Owen	\$ 99.00
Deposition of Jeff Hood	\$ 99.00
Deposition of Lee Michael Bretz	\$ 65.40
Deposition of Christopher Hughes	\$ 90.60
Deposition of Paul Michael O'Dell	\$ 65.40
Deposition of Dr. C. Reiff Brown	\$182.00
Owens, Brake & Associates	
Preliminary Hearing Transcript	\$198.40
Deposition of Kyle Branum	\$175.11
Deposition of Glenda Tiffen	\$166.26
Deposition of Dr. Alan Kruckemyer	\$161.70

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: M. John Carpenter, Great Bend, KS
Mickey W. Mosier, Salina, KS
George R. Robertson, Administrative Law Judge
Philip S. Harness, Director